

ASSEMBLY BILL

No. 1027

Introduced by Assembly Member Buchanan

February 18, 2011

An act to add the heading of Part 1 (commencing with Section 9500) to, and to add Part 2 (commencing with Section 9510) to, Division 4.8 of the Public Utilities Code, relating to local publicly owned electric utilities.

LEGISLATIVE COUNSEL'S DIGEST

AB 1027, as introduced, Buchanan. Local publicly owned electric utilities: utility poles and support structures.

(1) Existing law provides for the creation of local publicly owned electric utilities, which include municipal corporations, public utility districts, and irrigation districts, that furnish electric services.

This bill would require a local publicly owned electric utility to make surplus space and excess capacity on and in their utility poles and support structures available for use by cable television corporations, video service providers, and telephone corporations. The bill would require fees adopted to cover the costs to provide this use to meet specified requirements, and would specify the manner in which these fees could be challenged. By imposing new duties on local utilities, the bill would impose a state-mandated local program.

(2) The California Constitution requires the state to reimburse local agencies and school districts for certain costs mandated by the state. Statutory provisions establish procedures for making that reimbursement.

This bill would provide that, if the Commission on State Mandates determines that the bill contains costs mandated by the state,

reimbursement for those costs shall be made pursuant to these statutory provisions.

Vote: majority. Appropriation: no. Fiscal committee: yes.
State-mandated local program: yes.

The people of the State of California do enact as follows:

SECTION 1. The heading of Part 1 (commencing with Section 9500) is added to Division 4.8 of the Public Utilities Code, to read:

PART 1. LOW-INCOME WEATHERIZATION PROGRAMS

SEC. 2. Part 2 (commencing with Section 9510) is added to Division 4.8 of the Public Utilities Code, to read:

PART 2. UTILITY POLES AND SUPPORT STRUCTURES

9510. (a) The Legislature finds and declares that in order to promote broadband access and adoption, it is in the interest of the state to ensure that local publicly owned electric utilities that own or control utility poles and support structures, including ducts and conduits, make available surplus space and excess capacity on and in those structures to cable television corporations, video service providers, and telephone corporations under reasonable rates, terms, and conditions.

(b) The Legislature further finds and declares that the oversight of fees imposed by local publicly owned electric utilities as a condition of providing the space or capacity described in subdivision (a) is a matter of statewide interest and concern. Therefore, it is the intent of the Legislature that this part supersedes all conflicting local laws and this part shall apply in charter cities.

9511. (a) (1) A local publicly owned electric utility shall make surplus space and excess capacity on and in a utility pole and support structure owned or controlled by the local publicly owned electric utility available for use by a cable television corporation, video service provider, or telephone corporation.

(2) A local publicly owned electric utility shall respond to a request for use by a cable television corporation, video service provider, or telephone corporation of a utility pole or support structure owned or controlled by the local publicly owned electric

1 utility within 45 days of the request. If the request is denied, the
2 local publicly owned electric utility shall provide in the response
3 the reason for the denial and the remedy to gain access to the utility
4 pole or support structure. If a response to a request for use is not
5 provided within 45 days, the request is deemed accepted.

6 (b) If a local publicly owned electric utility has the authority
7 pursuant to other law to impose a fee to provide the use described
8 in this section, that fee shall be adopted and levied consistent with
9 the requirements of this part.

10 (c) This part does not grant additional authority to a local
11 publicly owned electric utility to impose a fee that is not otherwise
12 authorized by law.

13 9512. (a) (1) An annual fee charged by a local publicly owned
14 electric utility for the use of a utility pole by a cable television
15 corporation, video service provider, or telephone corporation shall
16 not exceed 7.45 percent of the local publicly owned electric utility's
17 annual costs of ownership of the pole and its supporting anchor.

18 (2) An annual fee charged by a local publicly owned electric
19 utility for use of a support structure by a cable television
20 corporation, video service provider, or telephone corporation shall
21 not exceed the local publicly owned electric utility's annual costs
22 of ownership of the percentage of the volume of the capacity of
23 the structure rendered unusable by the equipment of the cable
24 television corporation, video service provider, or telephone
25 corporation.

26 (3) As used in this subdivision, the "annual costs of ownership"
27 is the sum of the annual capital costs and annual operation costs
28 of the pole or support structure, which shall be the average costs
29 of all similar utility poles or structures owned or controlled by the
30 local publicly owned electric utility. The basis for the computation
31 of annual capital costs shall be historical capital costs less
32 depreciation. The accounting upon which the historical capital
33 costs are determined shall include a credit for all reimbursed capital
34 costs. Depreciation shall be based upon the average service life of
35 the utility pole or support structure. "Annual cost of ownership"
36 does not include costs for any property not necessary for the cable
37 television corporation, video service provider, or telephone
38 corporation use.

39 (b) A local publicly owned electric utility shall not levy a fee
40 that exceeds the estimated amount required to provide use of the

1 utility pole or support structure for which the annual recurring fee
2 is levied. If the fee creates revenues in excess of actual costs, those
3 revenues shall be used to reduce the fee.

4 (c) If the cable television corporation, video service provider,
5 or telephone corporation requests a rearrangement of the utility
6 pole or support structure, and the local publicly owned electric
7 utility has the authority to levy fees as described in Section 9511,
8 the local publicly owned electric utility may charge a one-time
9 reimbursement fee for the actual costs incurred for the
10 rearrangement.

11 9513. (a) (1) Before adopting, or increasing, a fee described
12 in Section 9512, the local publicly owned electric utility shall hold
13 at least one open and public meeting as part of a regularly
14 scheduled meeting, at which time oral or written presentations
15 relating to the fee may be made.

16 (2) At least 14 days before the meeting described in paragraph
17 (1), the local publicly owned electric utility shall mail notice of
18 the time and place of the meeting, including a general explanation
19 of the matter to be considered, and a statement that the data
20 required by paragraph (3) is available, to a person or entity who
21 files a written request with the local publicly owned electric utility
22 for mailed notice of the meeting.

23 (3) At least 10 days before the meeting described in paragraph
24 (1), the local publicly owned electric utility shall make available
25 to the public data indicating the cost, or estimated cost, to make
26 utility poles and support structures available for use by a cable
27 television corporation, video service provider, or telephone
28 corporation.

29 (b) (1) An action by a local publicly owned electric utility to
30 adopt, or increase, a fee described in Section 9512 shall be taken
31 solely by an ordinance or resolution adopted by the legislative
32 body of the local publicly owned electric utility. The legislative
33 body of the local publicly owned electric utility shall not delegate
34 the authority to adopt or increase the fee to another entity or board.

35 (2) The legislative body of the local publicly owned electric
36 utility shall approve the ordinance or resolution to adopt or increase
37 the fee at a subsequent open and public meeting as part of a
38 regularly scheduled meeting, no earlier than 30 days after the initial
39 public meeting described in subdivision (a).

1 (3) An action adopting a fee or increasing a fee pursuant to this
2 section shall be effective no sooner than 60 days following the
3 final action on the adoption of the fee or fee increase.

4 9514. (a) Any person or entity may protest the adoption or
5 imposition of, or increase of, a fee described in Section 9512 by
6 serving written notice to the governing body of the local publicly
7 owned electric utility. The written notice shall contain a statement
8 informing the governing body of the factual elements of the dispute
9 and the legal theory forming the basis for the protest.

10 (b) The filing of protest pursuant to subdivision (a) shall not be
11 a basis for the local publicly owned electric utility to withhold
12 approval of the use of a utility pole or support structure.

13 9515. (a) A judicial action or proceeding to attack, review, set
14 aside, void, or annul an ordinance, resolution, or motion adopting,
15 or increasing, a fee described in Section 9512 shall be commenced
16 within 120 days of the effective date of the ordinance, resolution,
17 or motion.

18 (b) If an ordinance, resolution, or motion provides for an
19 automatic adjustment of a fee, and the automatic adjustment results
20 in an increase in the amount of a fee, a judicial action or proceeding
21 to attack, review, set aside, void, or annul the increase shall be
22 commenced within 120 days of the effective date of the increase.

23 (c) An action by a local publicly owned electric utility or
24 interested person shall be brought pursuant to Chapter 9
25 (commencing with Section 860) of Title 10 of Part 2 of the Code
26 of Civil Procedure.

27 (d) A person or entity shall not initiate an action or proceeding
28 pursuant to subdivision (a) unless both of the following
29 requirements are met:

30 (1) The fee will be directly imposed on the person or entity as
31 a condition for the use of a utility pole or support structure.

32 (2) At least 30 days before initiating the action or proceeding,
33 the person or entity requests the local publicly owned electric
34 utility to provide a copy of documents that purport to establish that
35 the fee does not exceed the amount reasonably necessary to cover
36 the cost of the use of the utility pole or support structure, consistent
37 with Section 9512. The local publicly owned electric utility may
38 charge a fee for the direct costs of copying the documents requested
39 pursuant to this paragraph.

1 9516. (a) A person or entity may request an audit in order to
2 determine whether a fee described in Section 9512 exceeds the
3 amount reasonably necessary to cover the costs to the utility of
4 the use of a utility pole or support structure, consistent with Section
5 9512. If a person or entity makes that request, the local publicly
6 owned electric utility shall retain an independent auditor to conduct
7 an audit to determine whether the fee is reasonable, unless an audit
8 has been performed for the same fee within the previous 12 months.

9 (b) To the extent that the audit determines that the amount of
10 the fee does not meet the requirements of this part, the local
11 publicly owned electric utility shall adjust the fee accordingly.

12 9517. This part does not limit the authority of a local publicly
13 owned electric utility to ensure compliance with all applicable
14 provisions of law in determining whether to approve or disapprove
15 use of a utility pole or support structure.

16 SEC. 3. If the Commission on State Mandates determines that
17 this act contains costs mandated by the state, reimbursement to
18 local agencies and school districts for those costs shall be made
19 pursuant to Part 7 (commencing with Section 17500) of Division
20 4 of Title 2 of the Government Code.